

BAIL SLIP

The Appellant/Accused namely Sakthivel @ Blade Sakthivel was directed to be released on bail as per order of this Court dt.15.2.07 made in CrI.MP.No.1/2007 in CrI.A.No.164/07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.06.2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

Criminal Appeal No.164 of 2007

Sakthivel @ Blade Sakthivel

.. Appellant

vs.

State represented by
Inspector of Police,
J4 Kotturpuram Police Station
Kotturpuram, Chennai - 85.

.. Respondent

Criminal Appeal filed u/s 374 of Cr.P.C against the conviction and sentence imposed upon him by the learned Additional Sessions Judge, Fast Track Court No.III, Chennai, in S.C.No.453 of 2006 dated 6th February 2007.

For appellant : Mr. G.Anantharangan

For respondent : Mr.P.Govindarajan
Additional Public Prosecutor.

JUDGMENT

The appellant is the sole accused in this case.

2. He has been prosecuted before the learned Additional Sessions Judge, Fast Track Court No.III, Chennai in S.C.No.453 of 2006.

3. The case of the prosecution is that on 20.2.2006, at about 9 p.m, when P.W.1, Pulcan came walking near the Kamarajar market in Kotturpuram, Chennai, the accused waylaid him, demanded Rs.200/- for consuming liquor, P.W.1 refused. The accused tried to kill him with M.O.1, knife. P.W.1 warded it off. P.W.1 sustained injury on his left hand. Public ran helter-skelter. The accused took cool drinks bottles from the shop of P.W.2, Subash and broke them on the road. Thereafter, the accused ran away from the scene place. At about 9.30 pm, at the Kotturpuram Police Station, Chennai, P.W.1 gave Ex.P.1,

complaint to P.W.4, Rajendran, Inspector, Kotturpuram. He registered this case. (Ex.P.3 F.I.R). At the hospital, P.W.3, Dr.Prithiviraj examined P.W.1 and found simple injury of 5 cm length on his left hand. (Ex.P.2 Accident Register Copy).

4. In the meanwhile, P.W.4 visited the scene place. Prepared Ex.P.4, Observation Mahazar in the presence of two witnesses. Drew Ex.P.5, Rough Sketch of the scene place. In the presence of witnesses, he collected soda bottle pieces (M.O.2 series) under Ex.P.6, Mahazar. He examined P.W.1 and other witnesses and recorded their statement. On 21.2.2006, at about 9.45 pm, near the Kotturpuram West Canal Bank road, P.W.4 arrested the accused. In the presence of one Venkatesan and Shankar, the accused gave Ex.P.7, confessional statement to P.W.4. In pursuance of that, he had produced M.O.1 knife from Kotturpuram river road. In the presence of said witnesses, it was seized by P.W.4 under Ex.P.8, Seizure Mahazar. P.W.4 produced the accused before the learned Magistrate for judicial remand. He has produced the case properties under Form-95 (Ex.P9 and Ex.P10) to the Court. Concluding his investigation, he filed the final report before the concerned court for offences under Sections 341, 324, 385, 427, 506(2) and 307 of IPC.

5. After complying the requirements under Section 207 Cr.P.C, the learned Magistrate committed the case to the Court of Principal Sessions Judge, Chennai under Section 209 Cr.P.C. It was made over to the Additional Sessions Court (FTC No.III), Chennai.

6. After hearing both and on consideration of the case-records, the trial Court framed charges under Section 341, 324, 307, 506(ii), 385 and 427 IPC. The accused denied the charges.

7. To substantiate the charges, prosecution examined P.Ws.1 to 4, marked Exs.P.1 to P.10 and exhibited M.Os.1 and 2.

8. On the incriminating aspects in the prosecution evidence, the trial Court examined the accused under Section 313 Cr.P.C.

9. The accused denied the offence. He did not examine any witness nor mark any document on his side.

10. Appreciating the said evidence and the arguments of both sides, the trial Court convicted and sentenced the appellant as under:

Conviction under Section	Sentence of imprisonment
(i) 341 IPC	One Month SI
(ii) 324 IPC	Three years SI.
(iii) 427 IPC	Two years SI
(iv) 385	-do-
(v) 506(ii) IPC	-do-

All the sentences were directed to run concurrently.

11. The learned counsel for the appellant contended that this case has been put up against the appellant to detain him under Act No.14 of 1982. There is inherent improbability in the evidence of P.W.1. He is a coached up and stock witness of the police. Even the evidence of P.W.3, the Doctor would show that the prosecution version of the case is false. The learned counsel for the appellant would further contend that the trial Court has totally erred in relying on the inadmissible portion of the alleged confession of the accused made to P.W.4, the Inspector of Police.

12. Learned Additional Public Prosecutor submitted that P.W.1's evidence substantiated the prosecution case, thus, the appellant was found guilty and he was punished accordingly.

13. I have given my anxious consideration to the rival submissions, perused the impugned judgement and also the evidence on record.

14. Now, the question is whether the prosecution has established the offences under Sections 341, 324, 506(ii), 385 and 427 IPC alleged as against the appellant beyond all reasonable doubts.

15. PW.1, is the star witness in this case. He is the author of Ex.P.1, complaint (Ex.P.3, FIR). Though several eye-witnesses have been mentioned, one eye-witness, P.W.2 alone has been examined. He is a shop keeper. He did not support the prosecution version of the case. He turned hostile.

16. A close reading of the evidence of P.W.1 would show its many material contradictions. If M.O.1 knife has been used in the manner as spoken to by P.W.1, his hand should have been severed. However, P.W.3, the Doctor noticed only a minor injury on his left hand. The trial Court simply accepted the ipsi dixit of P.W.1 as gospel truth. It considered it a biblical verse. It had glorified his evidence. The sole testimony of P.W.1 has not been corroborated by medical evidence. In the facts and circumstances, corroboration of his

evidence in material particulars by eye-witnesses becomes necessary to test the veracity of the evidence of P.W.1.

17. According to P.W.4 Rajendran, Inspector, Kotturpuram, on 21.2.2006, he had arrested the accused near the Kotturpuram West Canal Bank Road. Except P.W.4, none of the witness to Ex.P.7 has been examined. The accused gave him Ex.P.7, confessional statement to the effect that if he is taken to the Kotturpuram river bridge, he will show and produce him the knife with which he has assaulted P.W.1. (emphasis supplied).

18. Ex.P.7 contains incriminating information that with M.O.1 knife, the accused had assaulted P.W.1. The learned Additional Sessions Judge record/(admitted) the said statement of P.W.4 verbatim and marked it Ex.P.7. It is pertinent to note that in his Judgment, the learned Additional Sessions Judge has simply relied on the said evidence of P.W.4 to convict the appellant.

19. One of the basic principle of criminal law is that 'no amount of confession made to police is admissible'. There is total bar in relying on the confession made to police (see Section 24 to 27, Indian Evidence Act, 1872). Even any statement given by an accused during investigation to a police officer is a bar under Section 162 Cr.P.C to record a conviction.

20. The only limited exception is in Section 27 Evidence Act, 1872. As per that "so much of information" leading to the "the discovery of a fact" alone is admissible. Non-incriminating, non-implicating statement of the accused alone is admissible under Section 27 of the Evidence Act. A statement made to police implicating the accused with any accusation, is totally inadmissible in evidence. (see Section 25 of Evidence Act)

21. Now, in this case, the learned Additional Sessions Judge simply relied on such an inadmissible portion in Ex.P.7 confessional statement of the accused made to police (P.W.4) to convict him.

22. It is relevant here to note the following observations of mine in Balu @ Balamurugan Vs. Inspector of Police, Kai Kalathur, Perambalur District (2013 (1) L.W.(Cr1) 579 = 2013 (2) MLJ (Cr1) 502 (D.B)).:

"19. The Trial Court in its judgment held that for finding out the nature of the offence committed, the statement of the accused in his confessional statement recorded for the purpose of Section 27 Evidence Act can be referred to and relied on. According to the Trial Court a portion containing details of commission of offence stated in the confessional statement of

the accused can be referred to, to find out the nature of the offence committed by him.

20. Indian Criminal Law is modelled on the British Anglo - Saxon Criminal Jurisprudence. The basic foundation of criminal law/responsibility is that 'a person accused of an offence is presumed to be innocent till the guilt alleged as against him is proved beyond all reasonable doubts'. (See WOOLMINGTON VS. DIRECTOR OF PUBLIC PROSECUTIONS (1935 AC 462)). Thus, 'one's presumption of innocence itself is his basic human right' (See KAILASH GOUR Vs. STATE OF ASSAM [2012 (1) MLJ (Cr1) 807] and CHINNAPILLAI AND ANOTHER Vs. INSPECTOR, TALUK POLICE STATION, KRISHNAGIRI [2012 (2) L.W. (Cr1) 499]).

21. As a necessary corollary, suspicion, however, strong or probable, may not take the place of legal proof and when graver the charge, greater should be the standard of proof. The distance between 'may be true' and 'must be true' is too long. (See ASHISH BATHAM Vs. STATE OF M.P. [AIR 2002 SC 3206] and RETHINAM Vs. STATE OF TAMILNADU [2011 (11) SCC 140]).

22. However, law recognises reception of admission of certain aspects of the case, made by the accused, to some extent, under certain circumstances. As per Section 17 of the Evidence Act, 'Admission' of a fact or statement is relevant. Admission is a good form of evidence because it emanates from the very maker.

23. 'Admission' (See Section 17, supra) is generic and 'confession' is its species. When the admission contains something towards the blameworthiness of its maker it becomes confession. But, in tune with the basic principle of criminal law, to ensure genuineness and voluntariness in such form of admissions, namely, confession, many safeguards are provided in the Evidence Act itself (See Section 24 to 27).

24. The principle that "no confession made to a police officer is admissible" is firmly ingrained in Section 25 of the Evidence Act. But, there are certain exceptions to it. If it is made in the presence of a Magistrate, it can be relied on (See Section 26 of the Evidence Act). Further, a limited exception to this aspect is

also made in Section 27 of the Evidence Act. By way of a proviso to the preceeding sections prohibiting the admissibility of confession made to police, Section 27 provides limited exception to the embargo in Section 25 of the Evidence Act. What is permitted in Section 27 is 'so much of information' in the confessional statement of the accused 'leading to the discovery or recovery of a fact' and nothing more than that (See PULLUKURI KOTTAIYA Vs. KING-EMPEROR (AIR 1947 PC 67)). Such recovery consequent upon such information is commonly known as 'Section 27 Evidence Act Recovery' or 'Recovery Evidence'. So much of information that led to the discovery of a fact although it was made to police while the accused was in their custody is admissible. It can be relied on to convict the maker.

25. Practically speaking, when an accused is arrested by a Police Officer, some times, the Police Officer says that the accused had voluntarily gave him confession and this was recorded by him. It is commonly known as 'confessional statement' or 'disclosure statement' of the accused. It is recorded for the said limited purpose provided in Section 27 of the Evidence Act. Usually, it will be complete narration of the entire family history of the accused running to pages also containing many vital clues, details, information with regard to the commission of the offence and also concealment of crime objects, such as weapon, booty, etc., This statement will be of two types. One is, the part containing 'incriminating information' about him, such as how he arranged the killing, how he carried it out or about robbery etc, why he killed the victim and under what circumstances he had killed the victim, whether it was under grave and sudden or sustained provocation, such as killing of his wife by the husband due to her complete waywardness. The other one is the part containing 'non-incriminating information'. It will contain a statement of fact leading to the recovery or discovery of such fact, such as hide-out of the weapon or booty or spoils of the crime (see CHINNASAMY REDDY Vs. STATE OF A.P. [AIR 1962 SC 1788] and LIMBAJI AND OTHERS Vs. STATE OF MAHARASHTRA [2001 (10) SCC 340] usually recorded at the tail end of the confessional statement of the accused.

26. But, as we have already seen, the limited exception to the prohibition of admissibility of confession made to police provided in Section 27 of the Evidence Act is so much of information leading to the discovery of a fact alone, to put it in simple terms, only non-incriminating part alone. That part alone is admissible in evidence. That part alone can be used against the accused because law permits it (See Section 27, Evidence Act). "

23. A conviction has to be recorded based on legal evidence. Otherwise, it will militate against the constitutionally guaranteed personal liberty of the people. [See Article 21, Constitution of India and also Menaka Gandhi Vs. Union of India (AIR 1978 SC 597)].

24. Thus, Ex.P.7 confession with reference to M.O.1 knife has to be excluded from our zone of consideration.

25. The remaining evidence does not substantiate the prosecution version of the case.

26. In the circumstances, this Court is of the view that the prosecution has not established its case beyond all reasonable doubts.

27. In the result, this appeal is allowed. The conviction and sentence of the appellant under Section 341, 324, 427 385 and 506 (ii) IPC in S.C.No.453 of 2006 recorded by the learned Additional Sessions Judge, (Fast Track Court No.III), Chennai, are set aside. Bail bond executed by him shall stand cancelled.

Sd/-
Assistant Registrar

True Copy

सत्यमेव जयते
Sub Assistant Registrar

Note: Registry is directed to send a copy of this Judgement to the Director, Tamil Nadu State Judicial Academy, Chennai for the purpose of educating the Judicial Officers on the aspect of confession made to police.

To

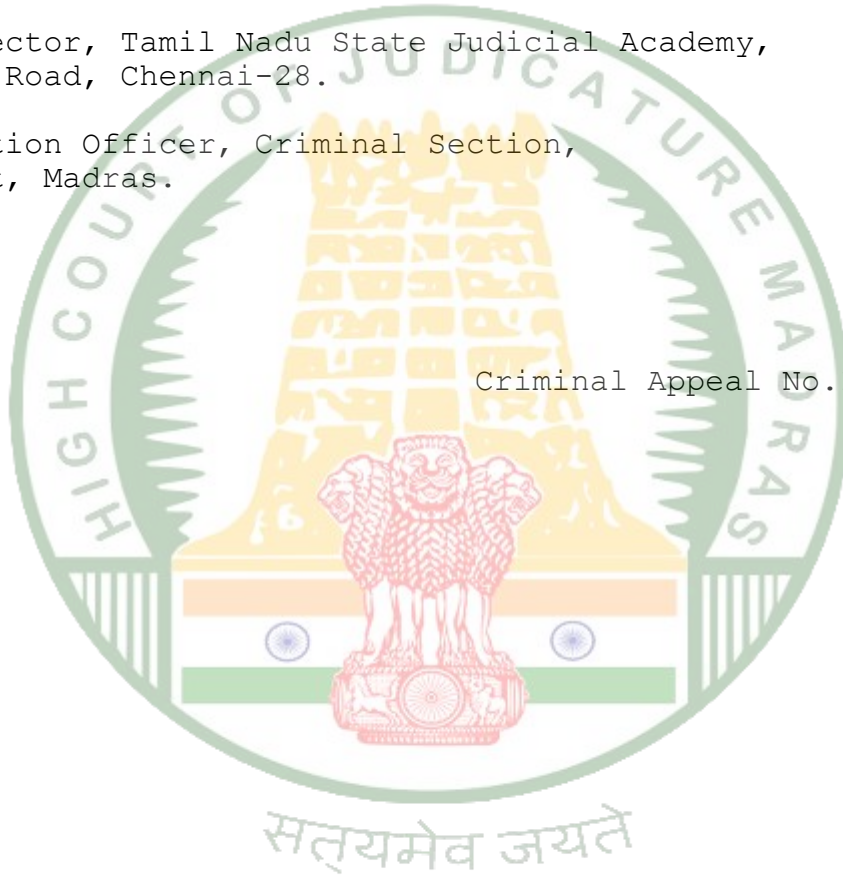
1. The Principal Sessions Judge,
City Civil Court, Chennai.

2. Additional Sessions Court (formerly FTC III)
Singaravelar Maligai, Chennai,

- 3.The Metropolitan Magistrate No.IX, Saidapet, Chennai.
- 4.The Chief Metropolitan Magistrate, Egmore, Chennai.
- 5.The Superintendent of Central Prison, Puzhal, Chennai.
6. Inspector of Police,
J4, Kotturpuram Police Station
Kotturpuram, Chennai - 85.
- 7.The Public Prosecutor, Chennai.
- 8.The Director, Tamil Nadu State Judicial Academy,
Greenways Road, Chennai-28.
- 9.The Section Officer, Criminal Section,
High Court, Madras.

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